

### **Information Disclosure Statement**

In the Office Action it was requested that copies of the references previously struck from the IDS submitted in the parent application 08/246,320 be submitted. Applicants have included the requested documents herewith.

### **Claim Rejections – 35 USC §112**

In regard to the §112 rejection, the Office Action asserts that the limitations of claim 22 of “each connecting member preset with an elasticity which causes the connecting member to elongate longitudinally when the annular elements are in their expanded state” lacks original support because the original specification did not contemplate presetting the elasticity to elongate as presently claimed.

In response, Applicants assert that the rejected limitations, as recited in instant claim 22, are features of the invention that are inherent in the specification and figures as filed but also in U.S. Application 08/737,492, filed November 18, 1996 and U.S. Application 08/246,320 filed May 19, 1994 from which the present Application claims priority. Applicants note that at least FIGs. 11a and 11b, as presented in the present Application, as well as in the parent and grandparent Applications, provide clear support for the limitations presently claimed.

In support of this assertion Applicants have included a Declaration of Support under §1.132 from Brian J. Brown.

In regard to the claimed element of a preset elasticity, elasticity is defined by Webster's Dictionary as “[t]he quality of being elastic; the inherent property in bodies by which they recover their former figure or dimensions, after the removal of external pressure or altering force; springiness; tendency to rebound; as, the elasticity of caoutchouc; the elasticity of the air (*Webster's Revised Unabridged Dictionary*, © 1996, 1998 MICRA, Inc.). Inherently, all materials have a predetermined or *preset* elasticity. The manner and extent of a material's elasticity is merely a matter of degree. Furthermore, the degree of a material's elasticity may influence other physical characteristics of a material in question. For example, one of ordinary

skill in the art will recognize that a material such as Nitinol will have a *preset elasticity* that may cause a member constructed from Nitinol to be capable of stretching or *expanding*.

In the present Application, FIGs. 11a and 11b clearly illustrate the concept of a materials elasticity as well as the extent to which a material, in this case connecting members are capable of longitudinally expanding when the annular elements are placed in their expanded state, such as is recited in the instant claims. In FIG. 11a the stent is shown prior to expansion and in FIG. 11b the stent is shown expanded (page 12, lines 14-16). When the annular elements of the stent configuration shown in FIG. 11a are expanded to the configuration shown in FIG. 11b it is clear that the connecting members have sufficient elasticity to cause the connecting members to elongate longitudinally as described in instant claim 22.

In light of the above, Applicants assert that the feature of "each connecting member preset with an elasticity which causes the connecting member to elongate longitudinally when the annular elements are in their expanded state" as recited in claim 22 is fully supported by the specification as originally filed and FIGs. 11a and 11b in particular.

In light of the above, the §112 rejection to claims 22-32 and 34 been overcome.

#### **Claim Rejections – 35 USC § 102**

Claims 22-34 were rejected under §102 as being anticipated by Roubin, where the effective filing date of the present claims is October 26, 1999. As indicated above, the present claims as amended herein have a priority date of May 19, 1994. Because the claims in question claim priority to a date prior to the filing date of the Roubin reference, Roubin cannot be said to anticipate the instant claims. As a result, the rejection is respectfully overcome.

**FORMALITIES**

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicants hereby petition for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

**CONCLUSION**

In view of the foregoing it is believed that the present application, with claims 22-32 and 34-35 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,  
VIDAS, ARRETT & STEINKRAUS, P.A.

Date: 11/19/02

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>In Re Application of:</b>	Burmeister et al.
<b>Application No.:</b>	09/427,291
<b>Filed:</b>	October 26, 1999
<b>For:</b>	Improved Tissue Supporting Devices
<b>Examiner:</b>	P. Prebilic
<b>Group Art Unit:</b>	3738

Box

Assistant Commissioner for Patents  
Washington, D.C. 20231

**Docket No: S63.2-8606**

DECLARATION OF BRIAN J. BROWN UNDER §1.132

I, Brian J. Brown state:

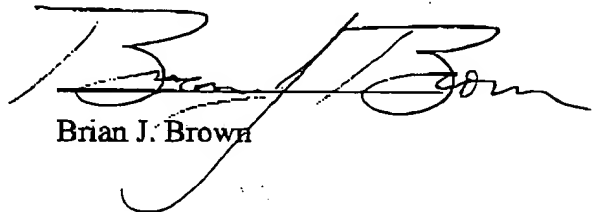
1. I have been employed with Boston Scientific, Scimed. since 1990. I have a Bachelor of Science degree in Mechanical Engineering from North Dakota State University of Fargo, North Dakota. My current position is Director of Research and Development of vascular stent development for all of Boston Scientific Corporation. I am a listed inventor or the sole inventor on numerous issued U.S. patents as well as many pending U.S. patent applications in the fields of stents, stent designs as well as others. I am very familiar with the concepts and properties of stent delivery, deployment and expansion characteristics of stents. I have a level of knowledge and familiarity with these concepts that is at least equivalent to that of one of ordinary skill in the art.

2. I am an inventor of U.S. Pat. No. 09/427,291 Application entitled IMPROVED TISSUE SUPPORTING DEVICES, and I provide this Declaration in support of the patentability of the invention described therein.

3. As one of ordinary skill in the art I attest that a predetermined elasticity is an inherent property of all materials including the connecting member of the stent shown and described in the present Application. As such, it is recognized that the connecting members of the stent shown and described in FIGs. 11a and 11b inherently have a predetermined or *preset* elasticity as recited in instant claim 22. I further attest that in the present Application it is recognized that when the annular elements of the stent configuration shown in FIG. 11a are expanded to the configuration shown in FIG. 11b it is clear that the connecting members must have sufficient elasticity to cause the connecting members to elongate longitudinally as described in instant claim 22 and shown in FIG 11b.

4. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: Nov 15, 02

  
Brian J. Brown